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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

MINERVA M. MARTE and  
CHARO MARTE NAVA,

Plaintiffs and Appellants,

v.

COUNTY OF LOS ANGELES,

Defendant and Respondent.

B279572

Los Angeles County  
Super. Ct. No. BC572268

APPEAL from an order of the Superior Court of Los Angeles County, Robert A. Dukes, Judge. Affirmed.

Carpenter, Zuckerman & Rowley, Gary S. Lewis, Pejman Ben-Cohen and Gregory Coolidge for Plaintiffs and Appellants.

Collins Collins Muir + Stewart, Michael L. Wroniak, Lisa L. Peterson and James C. Jardin for Defendant and Respondent.

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## **INTRODUCTION**

This appeal is taken from an order granting the motion of the County of Los Angeles (the County) to disqualify attorney Rebecca Herman and her then-employer, Carpenter, Zuckerman & Rowley (the current law firm), from representing plaintiffs Minerva M. Marte and Charo Marte Nava (plaintiffs) in this action against the County. Herman was once an attorney with Hurrell & Cantrall LLP (the former law firm) where she had represented the County in numerous matters.

The trial court found Herman represented the County in more than 21 matters during her time at the former law firm and was privy to privileged and confidential information. In addition, Herman represented the County in at least one case involving the same legal theories at issue in the present case. The court concluded Herman possessed a well-developed, specialized understanding of the County's litigation and settlement strategy which disqualified her and, vicariously, her current law firm, from representing plaintiffs in the present matter.

We conclude the court's factual findings are supported by substantial evidence and the court did not abuse its discretion in granting the disqualification motion. Accordingly, we affirm.

## **FACTS AND PROCEDURAL BACKGROUND**

### **1. Factual Background**

According to the complaint, plaintiffs are the surviving spouse and daughter of Leonardo Delmo Marte (Marte). Plaintiffs allege Marte was walking in a crosswalk when he was struck by a car and killed.

In February 2015, plaintiffs filed their initial complaint against the driver of the car and the County. As pertinent here,

plaintiffs asserted the County negligently designed and maintained the intersection where Marte was struck and killed, thereby creating a dangerous condition on public property.

**2. Herman's Work for the County at the Prior Law Firm**

From March 2012 to May 2016, Herman was an associate attorney at the prior law firm. The prior law firm represented the County in numerous lawsuits and Herman worked on at least 21 cases in which the firm was defending the County. In at least one of those cases, Herman and her supervisor, Thomas Hurrell, defended the County in a case in which the plaintiff alleged he was injured by a dangerous condition on public property.

**3. Herman's Work for Plaintiffs in the Present Suit Against the County**

At the time plaintiffs filed their initial complaint, they were represented by the Law Offices of Nico Tabibi and Nico Tabibi (Tabibi). Tabibi also filed the operative first amended complaint. In December 2015, Tabibi associated Pejman Ben-Cohen (Ben-Cohen) and Ben-Cohen Lawyers, PLC as co-counsel. Ben-Cohen subsequently joined the current law firm and continued to represent plaintiffs.

Herman joined the current law firm as an associate in May 2016 and advised the County in June 2016 that she, along with Ben-Cohen, would be representing plaintiffs in the present matter.

#### **4. The County's Motion to Disqualify Herman and the Current Law Firm**

##### **4.1. Motion to Disqualify**

In August 2016, shortly after learning that Herman was representing plaintiffs in the present matter, the County brought a motion to disqualify Herman and the current law firm due to Herman's conflict of interest vis-à-vis the County. Thomas Hurrell, named partner at the prior law firm and lead counsel for all County cases handled by the firm, explained that while Herman was an associate at the prior law firm, she worked on at least 21 cases defending the County and its various departments.

As part of her work on County cases, Herman, like other associates at the prior law firm, assisted Hurrell by conducting discovery, investigating facts, obtaining information from the County, and preparing for or summarizing deposition testimony. In addition, Herman had access to the case files for all County cases handled by the prior law firm, including confidential information such as case updates and strategies, analyses of claims, the County's litigation and settlement strategy, and information about the County's litigation budget. She also had access to internal practices, procedures and strategies used in defending claims filed against the County and participated in strategy meetings with trial counsel, County Counsel, and other County representatives.

According to Hurrell, Herman's work at the firm provided her "with a well-developed, specialized understanding of the County's legal theory of the case and litigation strategy in defending County cases." Herman also worked on at least one

case involving, as here, an action against the County alleging injury resulting from a dangerous condition on public property.<sup>1</sup>

#### **4.2. Opposition to the Motion to Disqualify**

The current law firm opposed the motion for disqualification. Herman submitted a declaration supporting the opposition, in which she minimized her involvement with the present case. Specifically, she stated she never communicated with plaintiffs, did not prepare or respond to discovery, and did not take or defend any depositions. She characterized her work on the present case as “inconsequential” and limited to preparing and appearing ex parte to request a continuance of the County’s motion for summary judgment and the trial.

As for her work at the prior law firm, Herman stated “it consisted primarily with Sheriff Deputies’ personnel files, which were individually specific to deputies, and not the County.” (*Sic.*) She also denied she obtained “any specialized knowledge, shared confidences, confidential information, or any other inside information with respect to the County” and further denied working on any files similar to the present case. Herman also stated she did not discuss the County’s internal practices, procedures or litigation strategy with any attorney at the current law firm.

Ben-Cohen also provided a declaration in support of the current law firm’s opposition, in which he affirmed, almost word

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<sup>1</sup> We take judicial notice of the complaint filed on November 26, 2014 and the County’s answer filed on February 9, 2015 in *Ramirez v. County of Los Angeles* (Super. Ct. Los Angeles County, 2016, No. BC565089). (Evid. Code, §§ 452, subd. (d), 459, subd. (a).)

for word, Herman's statements about her work at the current firm.

#### **4.3. Reply in Support of the Motion to Disqualify**

The County reiterated the apparent conflict of interest created by Herman's successive representations for, and then against, the County. In addition, counsel for the County responded to Herman's suggestion that her work on the instant case was "inconsequential" by summarizing, in 22 paragraphs, the frequent contacts she had with Herman between June 9 and August 25, 2016.

#### **5. The Court's Order Disqualifying Herman and the Current Law Firm; The Appeal**

The court heard argument on the disqualification motion on October 19, 2016. At that time, Ben-Cohen informed the court that the current law firm had terminated Herman's employment.

The court granted the County's motion to disqualify Herman and the current law firm. The court found that Herman's prior representation of the County exposed her to confidential information and allowed her to develop a "well-developed, specialized understanding of the County's legal theory of the case and litigation strategy in defending County cases."

In addition, the court found the present matter " 'linked in some rational manner' " to the *Ramirez* case in which Herman defended the County, such that the court concluded it was likely Herman obtained confidential information relevant to the present case.

After noting the current law firm made no effort to erect an ethical wall within the firm to protect the County's confidences, the court found the current law firm should be disqualified. The

court also took issue with Herman’s description of her work on the instant case as “inconsequential,” as well as her failure to obtain the County’s written consent to her subsequent representation.

The current law firm timely appeals.<sup>2</sup>

## DISCUSSION

The current law firm contends the trial court erred in disqualifying Herman because the County failed to establish a substantial relationship between Herman’s work at the prior law firm and her work on the present lawsuit. We disagree.

### 1. Standard of Review

A trial court’s decision to disqualify counsel is ordinarily reviewed for abuse of discretion. (*People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1143 (*Speedee Oil*).) When a trial court’s ruling rests on its resolution of disputed factual issues, “the reviewing court should not substitute its judgment for the trial court’s express or implied findings supported by substantial evidence. [Citations.] When substantial evidence supports the trial court’s factual findings, the appellate court reviews the conclusions based on those findings for abuse of discretion. [Citation.]” (*Id.* at pp. 1143–1144.)

The deference we afford to the court’s factual findings extends not only to its express findings but also to any implicit findings for which there is substantial evidentiary support.

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<sup>2</sup> On January 6, 2017, this division summarily denied plaintiffs’ petition for a writ of mandate/prohibition/supersedeas and their request to stay the disqualification order.

(*SpeedDee Oil, supra*, 20 Cal.4th at p. 1143; *Federal Home Loan Mortgage Corp. v. La Conchita Ranch Co.* (1998) 68 Cal.App.4th 856, 860 [“even where there are no express findings, we must review the trial court’s exercise of discretion based on implied findings that are supported by substantial evidence”]; *McDermott Will & Emery LLP v. Superior Court* (2017) 10 Cal.App.5th 1083, 1110.) The abuse of discretion standard requires that we affirm the ruling unless “there is no reasonable basis for the trial court’s decision.” (*Federal Home Loan Mortgage Corp.*, at p. 860.)

A trial court’s discretion is, of course, limited by the applicable legal principles and our courts also recognize “a disqualification motion involves concerns that justify careful review of the trial court’s exercise of discretion.” (*SpeedDee Oil, supra*, 20 Cal.4th at p. 1144; see *In re Complex Asbestos Litigation* (1991) 232 Cal.App.3d 572, 585.) Accordingly, we must examine the applicable legal principles before evaluating the current law firm’s claim that there was no reasonable basis for the trial court’s order disqualifying Herman and the firm.

## **2. Governing Legal Principles**

An attorney is required to avoid the representation of adverse interests. The attorney cannot, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment. (Rules Prof. Conduct, rule 1.9.) A motion to disqualify a party’s counsel for an alleged conflict of interest implicates several important interests. (*SpeedDee Oil, supra*, 20 Cal.4th at p. 1144.) When considering a disqualification motion, courts have considered the clients’ right to counsel of their choice, the



attorney's interest in representing a client, the financial burden on the client if required to replace disqualified counsel, and the potential that tactical abuse underlays the disqualification proceeding. (*In re Complex Asbestos Litigation*, *supra*, 232 Cal.App.3d at p. 586.)

“Nevertheless, determining whether a conflict of interest requires disqualification involves more than just the interests of the parties. [¶] A trial court's authority to disqualify an attorney derives from the power inherent in every court ‘[t]o control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto.’ (Code Civ. Proc., § 128, subd. (a)(5); [citations].) Ultimately, disqualification motions involve a conflict between the clients' right to counsel of their choice and the need to maintain ethical standards of professional responsibility. [Citation.] The paramount concern must be to preserve public trust in the scrupulous administration of justice and the integrity of the bar.” (*SpeeDee Oil*, *supra*, 20 Cal.4th at p. 1145.) Importantly, observed the *SpeeDee Oil* court, “judges must examine these motions carefully to ensure that literalism does not deny the parties substantial justice.” (*Id.* at p. 1144.)

“Where the potential conflict is one that arises from the *successive* representation of clients with potentially adverse interests, the courts have recognized that the chief fiduciary value jeopardized is that of client *confidentiality*.” (*Flatt v. Superior Court* (1994) 9 Cal.4th 275, 283 (*Flatt*).) A motion brought under these circumstances, in which the former client seeks to disqualify his former attorney from serving as counsel to a successive client in litigation adverse to the interests of the

former client, requires that “the [former] client demonstrate a ‘*substantial relationship*’ between the subjects of the antecedent and current representations.” (*Ibid.*) This “‘substantial relationship’” ensures the new client will only be deprived of his counsel of choice where necessary to protect the former client’s interest in ensuring the confidentiality of matters disclosed to the attorney in the course of the prior representation. (*Ibid.*; accord, *Sharp v. Next Entertainment Inc.* (2008) 163 Cal.App.4th 410, 428.) Whether or not disqualification is required in successive representation cases depends upon two variables: “(1) the relationship between the legal problem involved in the former representation and the legal problem involved in the current representation, and (2) the relationship between the attorney and the former client with respect to the legal problem involved in the former representation.” (*Jessen v. Hartford Casualty Ins. Co.* (2003) 111 Cal.App.4th 698, 709 (*Jessen*).)

**3. The court did not abuse its discretion by disqualifying Herman and the current law firm.**

The current law firm argues the court erred in disqualifying Herman because there is no “substantial relationship” between Herman’s prior work for the County and her work on behalf of plaintiffs in the current litigation.

“To determine whether there is a substantial relationship between successive representations, a court must first determine whether the attorney had a direct professional relationship with the former client in which the attorney personally provided legal advice and services on a legal issue that is closely related to the legal issue in the present representation. (*Jessen*[, *supra*,] 111 Cal.App.4th [at pp.] 710–711.) If the former representation involved such a direct relationship with the client, the former

client need not prove that the attorney possesses actual confidential information. (*Id.* at p. 709.) Instead, the attorney is presumed to possess confidential information if the subject of the prior representation put the attorney in a position in which confidences material to the current representation would normally have been imparted to counsel. (*Flatt, supra*, 9 Cal.4th at p. 283; *Adams v. Aerojet-General Corp.* (2001) 86 Cal.App.4th 1324, 1332; *H.F. Ahmanson & Co. v. Salomon Brothers, Inc.* (1991) 229 Cal.App.3d 1445, 1453–1454.) When the attorney’s contact with the prior client was not direct, then the court examines both the attorney’s relationship to the prior client and the relationship between the prior and the present representation. If the subjects of the prior representation are such as to ‘make it likely the attorney acquired confidential information’ that is relevant and material to the present representation, then the two representations are substantially related. (*Jessen*[,] at p. 711; see *Farris v. Fireman’s Fund Ins. Co.* (2004) 119 Cal.App.4th 671, 680 [material confidential information is that which is ‘directly at issue in’ or has ‘some critical importance to, the second representation’].) When a substantial relationship between the two representations is established, the attorney is automatically disqualified from representing the second client. (*Flatt, supra*, 9 Cal.4th at p. 283; see Hazard and Hodes, *The Art of Lawyering* (3d ed. 2000 & 2005-2 supp.) § 13.5, pp. 13-12–13-13.)” (*City and County of San Francisco v. Cobra Solutions, Inc.* (2006) 38 Cal.4th 839, 847.)

Here, the court found Herman was likely to have obtained confidential information while working at the prior law firm. This conclusion is supported by substantial evidence. Specifically, while she worked at the prior law firm, Herman defended the

County in at least 21 cases. Herman's supervising partner at the prior law firm, Thomas Hurrell, explained all associates working on cases for the County "by necessity are exposed to and obtain confidential information" relating to the firm's cases. In addition, associates have access not only to the case files on their assigned cases but *all* County cases being handled by the prior law firm. Those files and other materials include confidential information regarding the County such as case updates and strategy reports, analyses of plaintiffs' claims, the County's litigation and settlements strategies, and information about the County's litigation budget. Herman was also exposed to the prior law firm's (and the County's) internal practices, procedures, and strategies in the defense of claims. And Herman participated in strategy meetings with trial counsel, County Counsel, and other County representatives, all of which provided Herman with "a well-developed, specialized understanding of the County's legal theory of the case and litigation strategy in defending County cases."

In addition, Herman defended the County against at least one case in which the plaintiff alleged the existence of a dangerous condition on public property, *Ramirez v. County of Los Angeles, supra*, No. BC565089. There, as here, the plaintiff alleged the existence of a dangerous condition on public property. Although the locations at issue are different (a sandy beach as opposed to a crosswalk), the court did not err in concluding the confidential information Herman is presumed to have obtained would be material in the present case.

The current law firm argues the court erred in concluding a "substantial relationship" exists between Herman's prior and current representations. Primarily, the current law firm contends

there is no evidence Herman worked on cases at the prior law firm that are both factually and legally similar to the present case. The current law firm argues, for example, that the evidence in the present case will relate to the County's awareness or creation of a dangerous crosswalk—a factual issue distinct from the *Ramirez* matter, in which the plaintiff is alleged to have stepped on a jagged piece of metal while walking on the beach. Similarly, the current law firm asserts the fact that the *Ramirez* matter and the present case both relate to a dangerous condition on public property is insufficient to establish a substantial relationship between Herman's prior and current representations.

Contrary to the current law firm's supposition, a prior client need not establish *identity* between legal and factual issues involved in a prior and subsequent representation in order to disqualify counsel. Rather, in order to show the representations are substantially related, a prior client must show there is a substantial risk that the present representation will involve the use of confidential information acquired during the course of the prior representation. (*Farris v. Fireman's Fund Ins. Co.*, *supra*, 119 Cal.App.4th at p. 681.) And confidential information is not limited to case-specific information; it may include information relating to similar matters which would be useful to the current client in pressing its current claim, such as the identity of the key decision makers, the litigation philosophy and organizational structure of the prior client, the financial impact of pending claims against the prior client, and the existence and amount of insurance coverage. (See *Jessen*, *supra*, 111 Cal.App.4th at p. 713.) Here, as just explained, Herman worked extensively on County cases during her time at the prior law firm and gained

significant insight into the County’s litigation strategies generally—and in relation to dangerous condition cases. In addition, she participated in strategy meetings with key decisionmakers and learned about the County’s litigation approach and budget—information that was current, given that she left the prior law firm and joined the current law firm in May 2016 and began representing plaintiffs no later than June 2016. Such information would be of considerable value to plaintiffs in developing their strategy in the present case.

The primary case relied upon by the current law firm is distinguishable. In *Khani v. Ford Motor Co.* (2013) 215 Cal.App.4th 916 (*Khani*), which the current law firm claims is “remarkably similar to the instant case,” attorney Shahian worked for a law firm that represented Ford Motor Company. During Shahian’s three-year employment at that firm, he represented Ford in more than 150 cases including some lemon law<sup>3</sup> cases. (*Id.* at p. 919.) Four years after leaving that firm, Shahian represented a plaintiff in a lemon law case against Ford. The trial court granted Ford’s disqualification motion based on its conclusion that the legal issues in all lemon law cases are substantially similar. (*Ibid.*)

The Court of Appeal reversed the disqualification order, finding the court abused its discretion in concluding the prior and current cases were substantially related solely because they involved claims under the same statute. Instead, the court emphasized that Ford failed to show Shahian was exposed to

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<sup>3</sup> The Song-Beverly Consumer Warranty Act (Civ. Code, § 1790, et seq.) is known as California’s “lemon law.” (*Khani, supra*, 215 Cal.App.4th at p. 919.)

material confidential information which would be relevant to his subsequent representation:

“The evidence in this case does not establish that any information to which Shahian was exposed during his representation of Ford would be material to his representation of Khani in this case. While Ford presented evidence that Shahian represented it in California lemon law cases, it did not establish that any confidential information about the defense in those cases would be at issue in this case. Neither the allegedly defective 2008 Lincoln Navigator nor its repair history by Galpin Motors was the subject of any lawsuit in which Shahian represented Ford. Takahashi’s declaration does not show that Ford had any policies, practices, or procedures generally applicable to the evaluation, settlement or litigation of California Lemon Law cases at the time Shahian represented Ford, or that any such policies, practices, or procedures continued in existence unchanged between 2007 and 2011. Nor does it show that the same decision makers that were involved in cases Shahian handled for Ford are involved in this case.” (*Khani, supra*, 215 Cal.App.4th at p. 922.)

Here, as already discussed, the County offered exactly the sort of evidence which was lacking in *Khani*. Accordingly, that case is of no assistance to the current law firm.

## **DISPOSITION**

The order is affirmed. The County of Los Angeles shall recover its costs on appeal.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.